United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

76-7005

United States Court of Appeals

FOR THE SECOND CIRCUIT

B
P/S

No. 76-7005

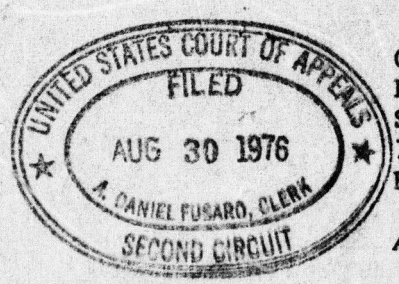
EAST HARTFORD EDUCATION ASSOCIATON, ET AL
Appellants

v.

BOARD OF EDUCATION OF THE
TOWN OF EAST HARTFORD, ET AL
Appellees

On Appeal From the United States District Court
for the District of Connecticut

BRIEF FOR THE APPELLEES



COLEMAN H. CASEY
BRIAN CLEMOW
Shipman & Goodwin
799 Main Street
Hartford, Connecticut 06103

Attorneys for Appellees

TABLE OF CONTENTS

TABLE OF CASES AND MISCELLANEOUS AUTHORITY

Miscellaneous Authority

STATEMENT OF ISSUE PRESENTED

Whether the District Court erred in holding, upon the defendants' motion for summary judgment, that a local Board of Education has the right to establish an enforceable minimal dress code guideline for teachers, which guideline requires inter alia that male teachers wear a tie and jacket under most circumstances, and that the individual teacher's interest in appearing as he pleases during working hours is not a protected interest in "personal liberty" within the meaning and scope of the First and Fourteenth Amendments.

STATEMENT OF THE CASE

The plaintiffs (appellants) in this action are the East Hartford Education Association ("EHEA"), a professional association; the Connecticut Education Association, Inc. ("CEA"), a non-profit Connecticut corporation and the parent organization of the EHEA; and Richard P. Brimley, a teacher employed by the East Hartford Board of Education. Plaintiffs are suing on

their own behalf and on behalf of all other teachers similarly situated. The defendants (appellees) are the Board of Education of the Town of East Hartford and the members of the Board of Education, some in their individual capacities.

The plaintiffs are challenging a policy of the East Hartford Board of Education entitled "Regulations for Teachers Dress" (attached to the Complaint, and hereinafter referred to as the "Dress Code." J.A. at 9) and its application to Richard P. Brimley, who is and was at all times referred to herein as a teacher of English and filmmaking at Penney High School in East Hartford. The Dress Code was issued on March 10, 1972, pursuant to a vote of the Board of Education. Shortly thereafter Richard Brimley questioned his principal concerning the interpretation and application of the Dress Code. The principal informed Mr. Brimley that he should normally wear a coat and necktie in keeping with the Dress Code, except that this attire would not be required when Mr. Brimley was engaged in filmmaking. On or about May

9, 1972, the East Hartford Education Association filed a grievance wherein it complained inter alia that (1) the code violated the collective bargaining agreement of September 7, 1971, and (2) if not invalid on its face, the code has been improperly applied to Richard Brimley.

These claims were submitted to arbitration and, in an opinion issued on January 25, 1973, arbitrator Archibald Cox held that the claims submitted by the Association were not arbitrable under the terms of the 1971-1974 collective bargaining agreement. (J. A. at 10 et seq.) Thereafter, on September 11, 1973, Plaintiffs herein filed their complaint, which alleges that the Dress Code violates constitutional guarantees under the First, Ninth, Tenth and Fourteenth Amendments to the Constitution of the United States (J. A. at 2 et seq.)

ARGUMENT

1. Plaintiffs fail to state a cause of action upon which relief can be granted because the Dress Code is reasonable on its face and rationally related to legitimate purposes.

Plaintiffs challenge the East Hartford Board of Education's Dress Code for its professional employees on the ground that it infringes a right or rights derived from the First, Ninth, Tenth and Fourteenth Amendments collectively. However, these allegations fail to state any claim upon which relief can be granted.

The District Court held that "the local Board rule does not violate due process of law under the Fourteenth Amendment, and it is not the type of symbolic act that is contemplated to be within the free speech clause of the First Amendment. The Court finds that a legitimate governmental interest exists here and the regulation is not unconstitutional because it is overly vague and unenforceable." 405 F. Supp. at 99.

The majority of cases which have proliferated in the past five years on the issue of the constitutionality of dress or grooming codes has concerned students who challenged these codes, especially as related to the length of hair or sideburns. E.g., Richards v. Thurston, 424 F.2d 1281 (1st Cir. 1970); Griffin v. Tatum,

424 F.2d 201 (5th Cir. 1970); Jackson v. Dorrier, 424 F.2d 213 (6th Cir. 1970); Crews v. Cloncs, 432 F.2d 1259 (7th Cir. 1970); see also Freeman v. Flake, 448 F.2d 258 (10th Cir. 1971), cert. denied, 405 U.S. 1032 (1972); New Rider v. Board of Education of Independent School District No. 1, Pawnee County, Oklahoma, 480 F.2d 693 (10th Cir. 1973), cert. denied, 414 U.S. 109 (1973).

There are few cases, however, dealing with such regulations as applied to teachers, and most of those relate to grooming. See, e.g., Finot v. Pasadena City Board of Education, 250 Cal. App. 2d 189, 58 Cal. Rptr. 520 (1967); Braxton v. Board of Public Instruction, 303 F. Supp. 958 (M.D. Fla. 1969). Only two cases deal specifically with the problem of dress regulations for teachers: Miller v. School District Number 167, Cook County, Ill., 495 F.2d 658 (7th Cir. 1974), and Blanchet v. Vermillion Parish School Board, 220 S. 2d 534 (La. App. 1969). Both these cases have upheld the school board's regulation.

Several circuits have firmly held that actions by high school students which challenge the constitutionality of such dress and grooming regulations do not present claims or questions upon which the federal courts will grant relief. In Freeman v. Flake, 448 F.2d 258 (10th Cir. 1971), cert. denied, 405 U.S. 1032, the court held that, in a challenge by students to a length-of-hair regulation under the First, Fourth, Eighth, Ninth, Tenth, and Fourteenth Amendments, the complaint did not state a claim on which relief could be granted.

> "Complaints which are based on nothing more than school regulations of the length of a male student's hair do not 'directly and sharply implicate basic constitutional values' and are not cognizable in federal courts under the principles stated in Epperson v. Arkansas." Id. at 262.

The court commented on the "nebulous constitutional rights here asserted," id., at 261, and said the "hodgepodge reference to many provisions of the Bill of Rights and the Fourteenth Amendment shows uncertainty as to the existence of any federally protected right." Id. at 260. See Zeller v. Donegal School District Board of

Education, 517 F.2d 600 (3rd Cir. 1975); King v. Saddleback Junior College District, 445 F.2d 952 (9th Cir. 1971); Jackson v. Dorrier, 424 F.2d 213 (6th Cir. 1970); Karr v. Schmidt, 460 F.2d 609 (5th Cir.), cert. denied, 409 U.S. 989 (1972).

These remarks are even more applicable to the present case, where plaintiff Brimley is an employee and not a student. The employment relationship, even with a state or municipality, is a voluntary one, entered into by the parties contractually. In hiring a teacher, the town is entitled to exercise reasonable discretion is setting standards of deportment and appearance.[1] The leading case in point is Miller v. School District No. 167, Cook County, Ill., 495 F.2d 658 (7th Cir. 1974), wherein the court affirmed the dismissal on motion of a suit by a teacher challenging the

---

[1]In fact, local boards of education in Connecticut are required by law to prescribe such rules for the management of the schools. Sections 10-220 and 10-221 of the Connecticut General Statutes (as amended).

constitutionality of his dismissal allegedly based on dress and grooming criteria. The court stated:

> "Unquestionably, individual choice in matters of hair style, dress, and overall appearance can reasonably be characterized as an aspect of freedom of 'liberty.' Sometimes the choice reflects a religious conviction, the expression of political faith, a national or family heritage, or simply a personal interest in projecting a special image or character. The word 'liberty' is not demeaned by construing it to include a right to appear as one pleases." (at 663).
>
> "Even if we assume for purposes of decision that an individual's interest in selecting his own style of dress or appearance is an interest in liberty, it is nevertheless perfectly clear that every restriction on that interest is not an unconstitutional deprivation. (at 664).
>
> "If a school board should correctly conclude that a teacher's style of dress or plumage, has an adverse impact on the educational process, and if that conclusion conflicts with the teacher's interest in selecting his own life style, we have no doubt that the interest of the teacher is subordinate to the public interest. (at 667).
>
> "Although the interest of children in associating with persons of their choice is, of course, severely limited by both their parents and the State, we should not ignore the fact that they do have a valid interest in not

being compelled to associate with persons they or their parents consider objectionable. In the classroom, since their presence is compelled, they necessarily must look to the school board for protection of this interest. . . We do not necessarily approve the decision this school board, or any school board, might make . . . we merely hold that as long as no greater interest than that involved in this controversy is at stake, the decision is one that the school is entitled to make. (at 667-8).

"We therefore hold that even if the individual interest in one's appearance may be characterized as an interest in liberty, the denial of public employment because the employer considers the applicant's appearance inappropriate for the position in question, does not in and of itself represent a deprivation that is forbidden by the Due Process Clause." (at 668).[2]

---

[2]The Seventh Circuit's holding in Miller is especially important because that circuit takes a contrary position with respect to student dress and grooming codes. See, e.g., Arnold v. Carpenter, 459 F.2d 939 (7th Cir. 1970); Holsapple v. Woods, 500 F.2d 49 (7th Cir. 1974). In Holsapple, the court carefully distinguished Miller in a footnote, 500 F.2d at 52, n. 2:

"In Miller we held that 'even if the individual interest in one's [there a teacher's] appearance may be characterized as an interest in liberty, the denial of public employment because the employer considers the applicant's appearance inappropriate

Moreover, the fact that the appellees herein seek to regulate dress rather than hair length or the sporting of a beard or sideburns lends further support to the decision of the District Court. The requirement that, under certain well-defined circumstances a teacher must wear normal business attire does not cause any alteration in the private or non-professional life of the individual. On the other hand, a requirement that the teacher be clean shaven or have short hair necessarily alters his out-of-school appearance. Compare Finot v. Pasadena City Board of Education, 58 Cal. Rptr. 520 (1967). Even courts in the student grooming code cases which have held for the student have acknowledged that dress codes "require less justification than one requiring hair to be cut." Richards v. Thurston, 424 F.2d 1281,

---

for the position in question, does not in and of itself represent a deprivation that is forbidden by the Due Process Clause.' Id. at p. 668, emphasis supplied . . . . 'The unavailability of a teaching position in one School District is less serious . . . than the deprivation of an opportunity to obtain an education.' Miller at p. 665."

1285 (1st Cir. 1970); Crews v. Cloncs, 432 F.2d 1259, 1264 (7th Cir. 1970).

The Supreme Court's recent opinion in Kelley v. Johnson, ___ U.S. ___, 47 L.Ed. 2d 708 (1976), reversing Dwen v. Barry, 508 F.2d 836 (2d Cir. 1975) and 483 F.2d 1126 (2d Cir. 1973), supports appellees' contention that there is no right to dress as a teacher chooses in the face of a governmental regulation which is clearly reasonable. In Kelley, the Supreme Court held that a Suffolk County (N.Y.) Police Department regulation governing hair grooming for male members of the force did not violate any right guaranteed by the Fourteenth Amendment. At the outset the Court noted that "whether the citizenry at large has some sort of 'liberty' interest within the Fourteenth Amendment in matters of personal appearance is a question on which this Court's cases offer little, if any, guidance." 47 L.Ed. 2d at 714. The Court was willing to presume the existence of some such right, however, for purposes of its opinion, because it found that the governmental interest outweighed any interest the

plaintiff may have had.

The test applied by the Court was a balancing test stated as follows: "The constitutional issue to be decided . . . is whether petitioner's determination that such regulations should be enacted is so irrational that it may be branded 'arbitrary,' and therefore a deprivation of respondent's 'liberty' interest in freedom to choose his own hair style." Id. at 716. This test places a heavy burden of proof on the plaintiff to demonstrate that the regulation is arbitrary; the burden is not on the governmental agency to demonstrate the reasonableness of the regulation. The presumption is that the regulation is valid. See Massachusetts Board of Retirement v. Murgio, ___ U.S. ___, 44 U.S.L.W. 5077, 5079 - 5080 (U.S. Sup. Ct. June 22, 1976). As the Kelley Court stated, 47 L.Ed. 2d at 715 - 716:

> "[T]he question is not, as the Court of Appeals conceived it to be, whether the State can 'establish' a 'genuine public need' for the specific regulation. It is whether respondent can demonstrate that there is no rational connection between the regulation . . . and the

> promotion of safety of persons and property. United Public Workers v. Mitchell, 330 U.S. 75, 100 - 101 (1947); Jacobson v. Massachusetts, 197 U.S. 11, 30 - 31 (1905). We think the answer here is so clear that the District Court was quite right in the first instance to have dismissed respondent's complaint. Neither this Court, the Court of Appeals, or the District Court is in a position to weigh the policy arguments in favor of and against a rule regulating hair styles as a part of regulations governing a uniformed civilian service." Id. at 715 - 716.

The Court has since followed this approach in Quinn v. Muscare, ___ U.S. ___, 48 L.Ed. 2d 165 (1976), wherein the Court, considering a challenge to a personal appearance regulation issued by the Chicago Fire Department, stated, id. at 168:

> "In [Kelley v. Johnson], we concluded that 'the overall need for discipline, esprit de corps, and uniformity' defeated the policeman's 'claim based on the liberty guaranty of the Fourteenth Amendment.' 47 L.Ed. 2d 708. Kelley v. Johnson renders immaterial the District Court's factual determination regarding the safety justification for the Department's hair regulation about which the Court of Appeals expressed doubt." (emphasis supplied)

The Court dismissed the writ of certiorari as improvidently granted.

The appellees asserted in the District Court that the Dress Code, which is flexible according to the special circumstances of each teacher, is reasonably related on its face to the legitimate purposes of promoting good grooming among students, building respect for teachers among students and the public, establishing a professional image for teachers, maintaining decorum, and creating an effective and efficient school system. The plaintiffs did not rebut these arguments in the District Court, as they were required to do under the Kelley test. The courts need not second guess the legislative determination of the local school board, especially where the reasons for the regulations are so patently apparent, and where no showing has been made by the plaintiff of the infringement of some significant right.[3]

---

[3]Moreover, the Supreme Court's decision in Ham v. South Carolina, 409 U.S. 524 (1973), casts very grave doubt on the continuing validity of the holdings in cases that personal appearance is "an ingredient of personal freedom protected by the United States Constitution." Breen v. Kahl, 419 F.2d 1034, 1036 (7th Cir. 1969). In Ham, the petitioner advanced the

2. Plaintiffs fail to state a cause of action upon which relief can be granted because the right, if any, is minimal in nature and not infringed by the Dress Code.

The fact that Plaintiffs' claim that the alleged right to personal appearance receives the constitutional imprimatur from the First, Ninth, Tenth and Fourteenth Amendments does not strengthen their case, as it is readily apparent that the right is "nebulous" and based upon "hodgepodge reference" to the Constitution.

---

the argument that there had been error in the court below by the trial court's failure to question prospective jurors about their possible prejudice against defendant's beard. Although reversing for possible race prejudice, the Court found that the fact that defendant wore a beard was constitutionally indistinguishable "from a host of other possible similar prejudices." The Court stated: "The trial judge's refusal to inquire as to particular bias against beards . . . does not reach the level of a constitutional violation." Id. at 528. The court in Miller v. School District No. 167, Cook County, Ill., supra, has construed the Ham decision as greatly restricting earlier holdings in that circuit that grooming codes for students were unconstitutional: "It is difficult, and perhaps impossible, to reconcile that assumption [that there is a constitutionally protected right to wear one's hair as one chooses] with the underlying rationale of the Court's holding in Ham." 495 F.2d at 663. See Karr v. Schmidt, 401 U.S. 1201, 1202 - 1203 (1971) (per Black, J.), followed in 460 F.2d 609 (5th Cir. 1972).

Freeman v. Flake, 448 F.2d 258, 260 - 261 (10th Cir. 1971), cert. denied, 4-5 U.S. 1032. Nor does the plaintiffs' reliance on privacy aid their case. The Supreme Court's review of the privacy docutrine, most recently in Roe v. Wade, 410 U.S. 113 (1973), makes clear that it extends only to activities relating to "marriage, procreation, contraception, family relationships, and child rearing and education." Id. at 152 (citations omitted). The privacy argument has also been rejected in a number of student dress and grooming code cases. Richards v. Thurston, 424 F.2d 1281, 1283 (1st Cir. 1970); King v. Saddleback Junior College District, 445 F.2d 932, 938 (9th Cir. 1971); Jackson v. Dorrier, 424 F.2d 213, 218 (6th Cir. 1970), cert. denied, 400 U.S. 850 (1970).

Whatever the merits, however, of a privacy argument in the student context, it is irrelevant to any teacher-employee dress code case, where the regulation of one's out-of-school personal life is de minimis and the occupational position of the teachers is, by nature, public. Moreover, the governmental interest in

controlling the quality and type of education is far greater in this context than it may be in the case of a student grooming code. As the Supreme Court stated in Adler v. Board of Education, 342 U.S. 485, 493 (1952):

> "A teacher works in a sensitive area in a schoolroom. There he shapes the attitudes of young minds toward the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the officials, teachers and employees as to their fitness to maintain the integrity of the schools as part of an order society, cannot be doubted."

See also Shelton v. Tucker, 364 U.S. 479, 485 (1960); Slochower v. Board of Education of New York, 350 U.S. 551, 555 (1956) (employee must comply with "reasonable, lawful, and non-discriminatory terms laid down by the proper authorities."); cf. Keyishian v. Board of Regents of New York, 385 U.S. 589 (1967).

Plaintiffs also rely upon an alleged First Amendment right to personal appearance, where it is intended to be a form of self-expression. Such a right, if it can be said to exist at all, is narrowly defined and does not exist

under the factual circumstances of this case. The case usually cited to support the First Amendment theory of a right of appearance is Tinker v. Des Moines School District, 393 U.S. 502 (1969). In that case the Court held that a school system could not forbid students from wearing black armbands in protest to the war in Vietnam solely upon the ground that such activity threatened the work of schools. Likening the conduct to "pure speech," the Court tipped the balance in favor of protecting the conduct because no showing was made that the prohibition was based on anything more than "a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." Id. at 509. The right being "akin to 'pure speech'" and, therefore, fundamental, it could only be forbidden upon a showing that it would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." Id. See James v. Board of Education of Central District No. 1, 461 F.2d 566,

571 (2d Cir. 1972).

The conduct involved in this case does not fall within the Tinker rationale. First, the Court specifically distinguished the conduct herein involved: "The problem posed by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style, or deportment . . . . Our problem involves direct, primary First Amendment rights akin to 'pure speech.'" Id. at 507 - 508 (citation omitted, emphasis added). The Court clearly wished to distinguish overt, political protest from other kinds of non-political, lifestyle choices which are reflected only dimly (if at all) by grooming preferences. Hence, plaintiffs also cannot invoke Pickering v. Board of Education, 391 U.S. 563 (1968), wherein the Court extended First Amendment protection to statements of a teacher in a local newspaper on matters of school policy.

Where the alleged right does not begin to rise to the level of conduct "akin to pure speech" as in Tinker or the pure speech present

in Pickering, then the balance must tip in favor of the regulation. This conclusion is even more compelling where, as here, the conduct occurs in the confines of the schoolhouse (where the board of education is entitled to more control), and not outside the classroom after hours in a newspaper column on a topic unrelated to classroom subject matter, as in Pickering.

Other courts have followed this reasoning. In Richards v. Thurston, 424 F.2d 1281, 1283 (1st Cir. 1970), the court stated:

> "We recognize that there may be an element of expression and speech involved in one's choice of hair length and style, if only the expression of disdain for conventionality. However, we reject the notion that plaintiff's hair length is of a sufficiently communicative character to warrant the full protection of the First Amendment."

Similarly the court in Freeman v. Flake, 448 F.2d 258, 260 (10th Cir. 1971), relying upon the Tinker distinction between student armband regulations and clothing and grooming regulations, supra, stated:

> "We believe that the effect of [the Tinker] statement is to eliminate

> hair style from any impact of the decision. The wearing of long hair is not akin to pure speech. At most it is symbolic speech indicative of expressions of individuality rather than a contribution to the storehouse of ideas. With reference to symbolic speech, the Supreme Court said in the draft card burning cases, United States v. O'Brien, 391 U.S. 367, 376 (1968): 'We cannot accept the view that an apparently limitless variety of conduct can be labeled "speech" whenever the person engaging in the conduct intends thereby to express an idea.'"[4]

The First Amendment rationale has seemingly been rejected by the Supreme Court as well. In Kelley, supra at 714, the Court stated:

> "[W]e have sustained comprehensive and substantial restrictions upon activities of both federal and state employees lying at the core of the First Amendment. Civil Service Comm'n v. Letter Carriers, 413 U.S. 548 (1973); Broadrick v. Oklahoma, 413 U.S. 601 (1973). If such state regulations may survive challenges based on the explicit language of the First Amendment, there is surely even more room for restrictive regulations of

---

[4]The Dress Code is also not invalid under a First Amendment or Due Process "vagueness" argument, even assuming the existence of some constitutional right. The code is detailed and prescribes "in most circumstances . . . jacket, shirt and tie for men . . . ." Compare the vague student dress code in Crossen v. Fatsi, 309 F. Supp. 114 (D. Conn. 1970) (per Clarie, J.).

state employees where the claim implicates only the more general contours of the substantive liberty interest protected by the Fourteenth Amendment." (emphasis supplied)[5]

Appellants' asserted reasons for wishing to deviate from the Dress Code are all seemingly grounded in the First Amendment (Brief of Appellants at 3, 23):

(a) He wishes to present himself to his students as a person who is not tied to "establishment conformity;"

(b) He wishes to symbolically [sic] indicate to his students his association with the ideas of the generation to which those students belong, including the rejection of many of the customs and values, and of the social outlook, of the older generation;

(c) He feels that dress of this type enables him to achieve a closer rapport with his students, and thus enhances his ability to teach.

The appellants rely heavily on a number of cases prohibiting the dismissal of teachers because of the exercise of their First Amendment

---

[5]This Court seemingly rested its decision in Dwen v. Barry, 483 F.2d. 1131 (2d Cir. 1973) upon the due process guaranty of "liberty" in the Fourteenth Amendment. Id. at 1130.

rights. Brief of Appellant at 21 et seq. None of these cases involves the kind of conduct involved in the instant appeal; each case cited by appellants directly implicates the First Amendment because of the actual speech, written or oral, involved or the symbolic act of political dissent. The well reasoned opinion in Mailloux v. Kiley, 323 F. Supp. 1387 (D. Mass. 1971), aff'd. 448 F.2d 1242 (1st Cir. 1971), cited by appellants, is helpful on this point. In assessing whether the dismissal of a classroom teacher because of the use of an obscenity violated the teacher's First Amendment rights, the court stated, 323 F. Supp. at 1392:

> "[W]hen a secondary school teacher uses a teaching method which he does not prove has the support of the preponderant opinion of the teaching profession or of the part of it to which he belongs, but which he merely proves is relevant to his subject and students, is regarded by experts of significant standing as serving a serious educational purpose, and was used by him in good faith the state may suspend or discharge a teacher for using that method . . . ."

Appellants' appeals to fears of a "uniformed citizenry" (Brief of Appellants at 28) and characterization of this minimal

regulation as casting "a pall of orthodoxy over the classroom," "foster[ing] a homogenous people," and creating "enclaves of totalitarianism" (Brief of Appellants at 20 and 23) are totally out of proportion to the issue at hand. As the Pickering Court noted, "[i]t cannot be gainsaid that the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general." 391 U.S. at 568, cited with favor in Kelley v. Johnson, supra at 714. Buckley v. Valeo, ___ U.S. ___, 46 L.Ed. 2d 659, 842 (1976) (Rehnquist, J., concurring in part and dissenting in part). As the District Court in the instant case stated, 405 F. Supp. at 98:

> "Teachers set an example in dress and grooming for their students to follow. A teacher who understands this precept and adheres to it enlarges the importance of the task of teaching, presents an image of dignity and encourages respect for authority, which acts as a positive factor in maintaining classroom discipline."

This rule of "common sense" should prevail.

CONCLUSION

Appellants' suit alleging a constitutional interest in permitting teachers to appear in class in contravention of the school board's dress code was properly dismissed by the District Court for failure to state a claim upon which can be granted, in light of the legitimate interests of the board in promoting good grooming, building respect for teachers among students and the public, establishing a professional image for teachers, maintaining decorum, and creating an effective and efficient school system; and in light of the minimal constitutional nature of the interest asserted by the teachers.

For these reasons, appellees hereby request that this court affirm the District Court's dismissal of the complaint as to all counts for failure to state a claim upon which relief can be granted.

Respectfully submitted,
Appellees

Coleman H. Casey
Brian Clemow
for SHIPMAN & GOODWIN
799 Main Street
Hartford, Conn. 06103

CERTIFICATE OF SERVICE

This is to certify that two copies of the foregoing Brief of Appellees were deposited in the United States mails, postage prepaid, this 27th day of August, 1976, addressed to the following:

Martin A. Gould, Esquire
37 Lewis Street
Hartford, Connecticut 06103

By Coleman H. Casey